IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

NO. 73-57

CLAYTON E. BLAKEWAY, *Petitioner*

v.

SOUTHERN NATIONAL BANK OF HOUSTON,
Respondent

On Petition for Writ of Certiorari to the Court of Civil Appeals for the Fourteenth Supreme Judicial District of Texas

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Brief of Respondent in Opposition to Petition for Writ of Certiorari

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Petitioner does not present to the Court a federal constitutional question. The matters presented are questions of state substantive law and appellate procedure, and they do not show any discriminatory application of statutes or rules to Petitioner.

There is no authority to support Petitioner's contention that oral agreements which are unenforceable under the Statute of Frauds can nevertheless be the basis for tort liability for false representation. On contradictory evidence and over Respondent's strong denials, the jury found that oral agreements concerning future dealings with the hotel were made at the meeting of May 31, 1966, and that the parties agreed that Respondent would do certain things which Respondent also "represented" it would do. The appellate courts did not find a distinction between the "agreements" and the "representations" and have simply not accepted Petitioner's assertions that this case invovles more than allegations and findings of unperformed contractual promises within the Statute of Frauds.

The opinion and judgment of the Court of Civil Appeals ruled upon all points of error which had been presented, and the Court stated its conclusions of fact and law upon each material point assigned as error.

Petitioner does not show any probable violation of the United States Constitution in the screening of his application for writ of error addressed to the Texas Supreme Court. Nor has he shown that his application was passed upon in a manner violative of the Texas Constitution.

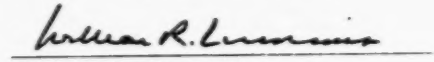
Petitioner argues that he was unconstitutionally deprived of the benefits of the "decisional law of the land" as represented by *"Moore" Burger, Inc. v. Phillips Petroleum Co.*, 492 S.W.2d 934 (Tex. 1972). Even if there were merit to this theory in the abstract, it offers no help to Petitioner in this case. The narrow holding of *"Moore" Burger* was explained in the opinion on the

motion for rehearing, 492 S.W.2d 940, and it could have no application to the facts of this case.

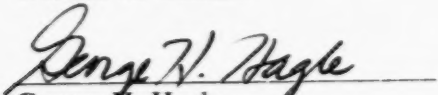
CONCLUSION

The petition should be denied.

Respectfully submitted.



William R. Lummis



George H. Hagle

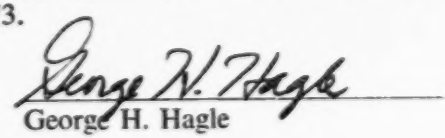
Counsel for Respondent

2500 Exxon Building
Houston, Texas 77002

ANDREWS, KURTH, CAMPBELL & JONES
2500 Exxon Building
Houston, Texas 77002
Of Counsel

CERTIFICATE OF SERVICE

I, George H. Hagle, counsel for Respondent and a member of the bar of the Court, hereby certify that three copies of the foregoing Brief of Respondent in Opposition to Petition for Writ of Certiorari were served upon Petitioner by mailing same, first class postage prepaid to counsel for Petitioner, Mr. Warner F. Brock, 250 The Main Building, Houston, Texas 77002 on the 31st day of July, 1973.



George H. Hagle